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October 17, 2006

Mr. Charles L. A. Terreni  
Chief Clerk/Administrator  
South Carolina Public Service Commission  
Synergy Business Park, The Saluda Building  
101 Executive Center Drive  
Columbia, South Carolina 29210

**Re: Time Warner Cable Information Services (South Carolina),  
LLC v. St. Stephen Telephone Company, Farmers Telephone  
Cooperative, Inc., Home Telephone Company, Inc., PBT  
Telecom, Inc. and Fort Mill Telephone Company  
Docket Nos. 2005-402-C, 2005-403-C, 2005-404-C, 2005-405-C,  
and 2005-406-C**

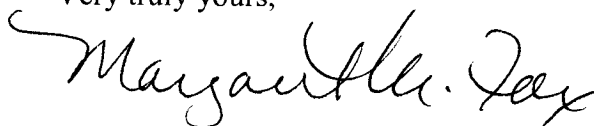
Dear Mr. Terreni:

Enclosed for filing please find an original and ten (10) copies of a Return to Petition in the above-referenced matter. By copy of this letter and Certificate of Service, all parties of record are being served by U. S. Mail with a copy of this Return.

Please clock in a copy of this filing and return it to us by our courier.

Thank you for your assistance.

Very truly yours,



Margaret M. Fox

MMF/rwm  
Enclosures

cc: Parties of Record

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NOS. 2005-402-C, 2005-403-C, 2005-404-C, 2005-405-C, 2005-406-C

Complaint of Time Warner Cable )  
Information Services (South )  
Carolina), LLC, )  
 )  
Complainant/Petitioner, )  
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v. )  
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St. Stephen Telephone Company, )  
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Defendant/Respondent. )  
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v. )  
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Farmers Telephone Cooperative, Inc., )  
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Defendant/Respondent. )  
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v. )  
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Home Telephone Company, Inc., )  
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Defendant/Respondent. )  
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v. )  
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PBT Telecom, Inc., )  
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Defendant/Respondent. )  
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v. )  
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Fort Mill Telephone Company, )  
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Defendant/Respondent. )  
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**RETURN TO PETITION OF TIME WARNER CABLE  
INFORMATION SERVICES (SOUTH CAROLINA), LLC, FOR  
RECONSIDERATION OF ORDER NO. 2006-515**

St. Stephen Telephone Company, Farmers Telephone Cooperative, Inc., Home Telephone Company, Inc., PBT Telecom, Inc., and Fort Mill Telephone Company (collectively “the Companies”), through their undersigned counsel, hereby respectfully submit this Return to the Petition for Reconsideration of Order No. 2006-515 of the Public Service Commission of South Carolina (“the Commission”) filed by Time Warner Cable Information Services (South Carolina), LLC (“TWCIS”) in the above-referenced dockets. The Companies respectfully request that the Commission deny the Petition for Reconsideration, and hereby submit the following in support of their position.

**A. Rural Exemption**

TWCIS first asserts that the Commission erred as a matter of law in holding that carriers who hold a rural exemption are relieved of the interconnection obligations of Section § 251(a) and (b) of the Telecommunications Act of 1996 (“the Act”). As an initial matter, it should be noted that the Companies have not asserted that their rural exemptions exempt them from the obligations of Sections 251(a) and (b) of the Act. Furthermore, TWCIS misconstrues the language contained in the Commission’s order and ignores the Commission’s actual holding.

The language to which TWCIS refers reads as follows: “Rural carriers are exempt from the obligations of subsection (c), but must still negotiate interconnection with other telecommunications carriers upon request under subsections (a) and (b), if the Commission determines that the rural exemption does not apply.” While the grammatical construction may be awkward, the language clearly notes that rural carriers are exempt

from the obligations of Section 251(c), but must still negotiate upon request under Sections 251(a) and (b). The language, “if the Commission determines that the rural exemption does not apply,” appears to refer to the determination of whether the request was made under Section 251(c) or not.

In any event, the language is irrelevant in light of the Commission’s holding that TWCIS’ Motion for Summary Disposition must be denied because there is a genuine issue of material fact regarding whether or not TWCIS is a telecommunications carrier. If TWCIS is not a telecommunications carrier, then it is not entitled to interconnection under either Section 251(a) or Section 251(c) of the Act, because only other “telecommunications carriers” are entitled to request interconnection. *See* 47 U.S.C. § 251(a) (“Each telecommunications carrier has the duty ... to interconnect ... with the facilities and equipment *of other telecommunications carriers....*”) (emphasis added); *see also* § 251(c) (“[E]ach incumbent local exchange carrier has ... [t]he duty to provide, for the facilities and equipment *of any requesting telecommunications carrier*, interconnection with the local exchange carrier’s network....”) (emphasis added). The Act defines “telecommunications carrier” as a “provider of telecommunications services[.]” 47 U.S.C. § 153(44).

The Voice-over Internet Protocol (“VoIP”) services that TWCIS is seeking to provide under a proposed interconnection arrangement have not been classified as a “telecommunications service” entitling it to the benefits of Section 251 of the Act. Accordingly, the Commission in its Order did not misconstrue the Act.

## **B. “Telecommunications Carrier” Status**

TWCIS next asserts that the Commission was clearly erroneous and abused its discretion in stating that a disputed issue of fact existed as to TWCIS’ status as a telecommunications carrier. TWCIS argues that the Commission previously found in prior proceedings that TWCIS is indeed a telecommunications carrier with respect to VoIP services. This is simply not true. While the Commission has referenced the ability of TWCIS to enter into negotiations as a telecommunications carrier [Order No. 2005-412 at 5 (Aug. 1, 2005)], the Commission later clarified on rehearing that TWCIS may be entitled to seek interconnection if the service it sought to provide is a “telecommunications service” under the Act and if TWCIS satisfied the definition of a “telecommunications carrier” under the Act [Order No. 2005-484 at 5 (Sept. 26, 2005)].

The Companies have repeatedly maintained that TWCIS does not appear to be a telecommunications carrier in the Companies’ service areas within the State with respect to the provisioning of VoIP services. *See, e.g.*, Joint Answer, dated Jan. 30, 2006, Complaints of Time Warner Cable Information Services (South Carolina), LLC v. St. Stephen Telephone Company, *et al.*, Docket Nos. 2005-402-C through 2005-406-C; Letter of John Staurulakis, Inc., to TWCIS’ counsel, dated Dec. 16, 2005. Despite TWCIS’ assertions to the contrary, the fact that other carriers have not questioned or disputed the nature of the services to be provided by TWCIS, or that other carriers have agreed to enter into interconnection agreements that treat TWCIS’ services like telecommunications services in the absence of a definitive ruling to the contrary, does not mean the issue has been predetermined as to the Companies’ respective service areas or that the Companies have waived their right to question the nature of TWCIS’ services.

Likewise, TWCIS' argument that it is entitled to interconnection because it holds itself out as a "telecommunications carrier," besides being yet another disputed issue of fact, is not persuasive and is irrelevant to the question of whether its service offerings are "telecommunications services." TWCIS has clearly reserved its right to contend that the VoIP services at issue are not "telecommunications services" and that TWCIS is not a "telecommunications carrier" with respect to the provisioning of those services. *E.g.*, TR at 30. Ample dispute exists as to the proper classification of VoIP services, and the Commission properly held these matters in abeyance pending resolution of the open federal dockets established to address these very issues.

### **C. Factual Errors**

Finally, TWCIS argues that the Commission mischaracterized the record in several respects, thereby substantially prejudicing its rights. TWCIS notes that the Commission erroneously characterized the stipulation between TWCIS and the South Carolina Telephone Coalition in Docket No. 2003-362-C in several respects. First, TWCIS claims the Commission erroneously stated that the stipulation precluded TWCIS from marketing or provisioning its services in the stipulated areas after July 1, 2004. In fact, the stipulation provided that TWCIS would not provide its services in *certain* areas (i.e., those areas where the rural telephone company no longer held a rural exemption) *prior to* July 1, 2004.

It should be noted that, while TWCIS claims the Commission "misstates the record," it is not the record of *this proceeding* to which TWCIS is referring, but the record in an earlier proceeding. The Commission included the information for background purposes only, and the alleged misstatement of fact is not relevant to the

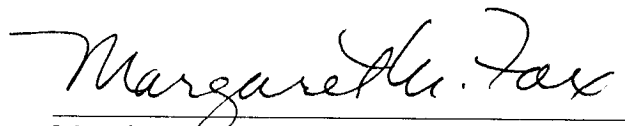
Commission's holding in this matter. As stated above, the stipulated term regarding the timing of TWCIS' provision of service did not relate to the Companies at issue in these dockets, *but only to those South Carolina Telephone Coalition members who no longer hold rural exemptions*. See Order No. 2004-213 in Docket No. 2003-362-C, at p. 3. As to the Companies at issue here, TWCIS agreed in Docket No. 2003-362-C not to provide service in those areas served by the Companies *at all* under the certificate granted in that proceeding. See Order No. 2004-213 at pp. 2-3 (citing a provision in the stipulation that provides: "TWCIS amends its application to seek to serve customers only in areas where the rural telephone company does not currently have a rural exemption under 47 U.S.C. § 251(f)(1).") TWCIS can hardly be prejudiced by a misstatement of a fact that does not relate to the Companies or to this proceeding, but only to the service areas of other telephone companies.

TWCIS next asserts that the Commission in its Order improperly described the geographic areas in which TWCIS wished to provide service and, further, failed to note that TWCIS informed the Commission that it also intended to provide regulated, non-VoIP services. These arguments are without merit. As with the foregoing argument, these issues pertain to other proceedings, and are simply not relevant here. Even if the Commission's geographic description of the service area sought in an earlier proceeding was factually incorrect (*i.e.*, it erroneously included other rural telephone companies' service areas in addition to the areas served by the Companies at issue here), it did not influence or otherwise affect the Commission's reasoning or its proper determination that these matters should be held in abeyance pending resolution of the issues before the Federal Communications Commission. Finally, the Commission's alleged failure to note

certain testimony in an earlier proceeding is simply not relevant here. TWCIS' contention in that regard was fully weighed and discussed in the Commission's orders in that proceeding. *See* Order Nos. 2005-412 and 2005-484 in Docket No. 2004-280-C.

WHEREFORE, for the reasons stated above, the Companies respectfully request that the Commission deny the Petition for Reconsideration filed by TWCIS in these matters.

Respectfully submitted,

A handwritten signature in cursive script, reading "Margaret M. Fox", written in dark ink. The signature is fluid and elegant, with the first name "Margaret" being more prominent than the last name "Fox".

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October 17, 2006

Columbia, South Carolina.



STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NOS. 2005-402-C, 2005-403-C, 2005-404-C, 2005-405-C, and 2005-406-C

Complaint of Time Warner Cable )  
Information Services (South )  
Carolina), LLC, )

Complainant/Petitioner, )

v. )

St. Stephen Telephone Company, )

Defendant/Respondent. )

\_\_\_\_\_ )

v. )

Farmers Telephone Cooperative, Inc., )

Defendant/Respondent. )

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v. )

Home Telephone Company, Inc., )

Defendant/Respondent. )

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v. )

PBT Telecom, Inc., )

Defendant/Respondent. )

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v. )

Fort Mill Telephone Company, )

Defendant/Respondent. )

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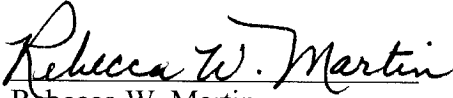
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SOUTH CAROLINA  
PUBLIC SERVICE COMMISSION

CERTIFICATE OF SERVICE

I, Rebecca W. Martin, Secretary for McNair Law Firm, P. A., do hereby certify that I have this date served one (1) copy of a Return to Petition on behalf of the Defendants/Respondents in the above-referenced matter on the following parties of record by causing said copies to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below.

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October 17, 2006

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